IN THE 363RD JUDICIAL DISTRICT COURT

OF DALLAS COUNTY, TEXAS

THE STATE OF TEXAS

VS. CAUSE NO. F07-53430-W

KENDRICK BERNARD DEMUS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

The defendant, Kendrick Bernard Demus, stands charged by indictment with the offense of capital murder, alleged to have been committed on or about the 3rd day of June, 2007, in Dallas County, Texas.

To this charge the defendant has pleaded not guilty. You are instructed that the law applicable to this case is as follows:

Our law provides that a person commits the offense of murder when he intentionally or knowingly causes the death of an individual.

A person commits the offense of capital murder when the person intentionally causes the death of an individual as defined above during the course of committing or attempting to commit the offense of robbery.

Our law provides that a person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, he intentionally or

knowingly or recklessly causes bodily injury to another or he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

The term, "in the course of committing theft," means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

"Attempt" to commit an offense occurs if, with specific intent to commit an offense, a person does an act amounting to more than mere preparation that tends, but fails, to effect the commission of the offense intended.

A person commits the offense of theft if with intent to deprive the owner of property he appropriates the property unlawfully.

"Appropriate" means to acquire or otherwise exercise control over property other than real property.

Appropriation of property is unlawful if the defendant obtains or exercises control over the property without the owner's effective consent.

"Deprive" means to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.

"Property" means tangible or intangible personal property including anything severed from land.

"Consent" means assent in fact, whether express or apparent.

"Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if induced by force, threat or fraud.

"Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the defendant.

"Deadly weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

"Individual" means a human being who has been born and is alive.

A person acts intentionally, or with intent, with respect to the result of his conduct when it is his conscious objective or desire to cause the result.

A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person acts recklessly or is reckless, with respect to the circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously

disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Our law provides that a defendant may testify in his own behalf if he elects to do so. This, however, is a privilege accorded a defendant; and, in the event he elects not to testify, that fact cannot be taken as a circumstance against him.

In this case, the defendant has elected not to testify; and you are instructed that you cannot and must not refer or allude to that fact throughout your deliberations or take it into consideration for any purpose whatsoever as a circumstance against him.

A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

A person is criminally responsible for an offense committed by the conduct of another if acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. Each party to an offense may

be charged with the commission of the offense. Mere presence alone at the time and the place of the commission of an offense, if any was committed, does not constitute one criminally responsible as a party to the offense. Or, a person is criminally responsible for an offense committed by the conduct of another if, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, then all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Robbery is a felony offense.

Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that on or about the 3rd day of June, 2007, in Dallas County, Texas, as alleged in the indictment, the defendant, Kendrick Bernard Demus, either acting alone or as a party, did then and there intentionally cause the death of Christian Marton, an individual, hereinafter called deceased, by shooting the deceased with a firearm, a deadly weapon, and the defendant, either acting alone or as a party, was then and there in the course of committing or attempting to commit the offense of robbery of said deceased, then you will find the defendant

guilty of capital murder and so say by your verdict.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall acquit the defendant of capital murder and next consider whether the defendant is guilty of the lesser included offense of murder.

Our law provides that a person commits the offense of murder if he commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

If you find from the evidence beyond a reasonable doubt that on or about the 3rd day of June, 2007, in Dallas County, Texas, the defendant, Kendrick Bernard Demus, either acting alone or as a party, did commit or attempt to commit robbery, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he either acting alone or as a party, committed an act clearly dangerous to human life that caused the death of Christian Marton by shooting the deceased with a firearm, then you will find the defendant guilty of murder, but not capital murder.

If you find from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder

or murder, but you have a reasonable doubt as to which offense he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of the lesser offense of murder.

If you do not so find beyond a reasonable doubt, or if you have a reasonable doubt thereof, you shall acquit the defendant of murder and next consider whether the defendant is guilty of the lesser included offense of aggravated robbery.

Our law provides that a person commits the offense of aggravated robbery if he commits the offense of robbery as hereinafter defined and he uses or exhibits a deadly weapon.

Our law provides that a person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, he intentionally or knowingly or recklessly causes bodily injury to another.

Our law provides that a person commits the offense of robbery if, in the course of committing theft, as that term is hereinafter defined, and with intent to obtain and maintain control of property of another, he intentionally or knowingly or recklessly causes bodily injury to another or he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

Now bearing in mind the foregoing instructions, if

you believe from the evidence beyond a reasonable doubt that the defendant, Kendrick Bernard Demus, either acting alone or as a party, on or about the 3rd day of June, A.D., 2007, in the County of Dallas, and State of Texas, as included in the indictment, did then and there, while in the course of committing theft and with intent to obtain or maintain control of the property of Christian Marton, hereinafter called complainant, the said property being current money of the United States of America, without the effective consent of the said complainant and with intent to deprive the said complainant of said property, did then and there, intentionally or knowingly or recklessly cause bodily injury to said complainant, by shooting complainant with a firearm, or he intentionally or knowingly threatens or places said complainant in fear of imminent bodily injury or death, then you will find the defendant guilty of aggravated robbery and so say by your verdict.

Unless you so find from the evidence beyond a reasonable doubt or you have a reasonable doubt thereof, you shall acquit the defendant.

If you find from the evidence beyond a reasonable doubt that the defendant is guilty of either capital murder or murder or aggravated robbery, but you have a reasonable doubt as to which offense he is guilty, then you must resolve that doubt in the defendant's favor and find him guilty of

the lesser offense of aggravated robbery.

If you have a reasonable doubt as to whether defendant is guilty of any offense defined in this charge, then you should acquit the defendant and say by your verdict, "Not Guilty."

In all criminal cases the burden of proof is on the State.

At times throughout the trial the Court has been called upon to pass on the question of whether or not certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings and are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which an objection is made, the Court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course, must not consider the same. As to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You are instructed that you are not to allow yourselves to be influenced in any degree whatsoever by what you may think or surmise the opinion of the Court to be. The Court has no right by any word or any act to indicate any

opinion respecting any matter of fact involved in this case, nor to indicate any desire respecting its outcome. The Court has not intended to express any opinion upon any matter of fact in this case, and if you have observed anything which you have or may interpret as the Court's opinion upon any matter of fact in this case, you must wholly disregard it.

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial. The law does not require a defendant to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The prosecution has the burden of proving the defendant guilty and it must do so by proving each and every element of the offense charged beyond a reasonable doubt and if it fails to do so, you must acquit the defendant.

It is not required that the prosecution prove guilt beyond all possible doubt; it is required that the prosecution's proof excludes all "reasonable doubt" concerning the defendant's guilt.

In the event you have a reasonable doubt as to the defendant's guilt after considering all the evidence before you, and these instructions, you will acquit him and say by your verdict "Not guilty".

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to the testimony, but you are bound to receive the law from the Court, which is herein given you, and be governed thereby.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your

notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court read the portion of disputed testimony to you from the official transcript. You shall not rely on your notes to resolve the dispute because those notes, if any, are not official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, ultimately, your verdict in this case.

After you retire to the jury room, you will select one of your members as your presiding juror. It is the presiding juror's duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form attached hereto, and signing the same as presiding juror.

After you retire to consider your verdict, no one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must neither consider, discuss, nor relate any matters not in evidence before you. You should neither

consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

After you have retired, you may communicate with this Court in writing through the bailiff who has you in charge. Your written communication must be signed by the presiding juror. Do not attempt to talk to the bailiff, the attorneys, or the Court regarding any question you may have concerning the trial of the case. After you have reached a unanimous verdict or if you desire to communicate with the Court, please use the jury call button on the wall and one of the bailiffs will respond.

Tracy F. Holmes

TRACY F. HOLMES, JUDGE
363rd Judicial District Court
Dallas County, Texas

VERDICT FORMS

We, the jury, find the Defendant, Kendrick Bernard Demus, guilty of capital murder, as charged in the Indictment.

William Strange III
Presiding Juror
PRINTED NAME: William Strange

-OR-

We, the jury, find the Defendant, Kendrick Bernard Demus, guilty of murder, as included in the Indictment.

_____
Presiding Juror
PRINTED NAME: _____

-OR-

We, the jury, find the Defendant, Kendrick Bernard Demus, guilty of aggravated robbery, as included in the Indictment.

_____
Presiding Juror
PRINTED NAME: _____

-OR-

We, the jury, find the Defendant, Kendrick Bernard Demus, "Not Guilty."

_____
Presiding Juror
PRINTED NAME: _____